

that interest attributed if the equity (including all stockholdings, whether voting or non-voting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that entity; and

(i) the interest holder also holds an interest in a broadcast station, cable system, SMATV, or multiple video distribution provider that operates in the same market, is subject to §§ 76.501, 76.505, or 76.905(b)(2) and is attributable without reference to this paragraph (i); or

(ii) the interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

(2) For purposes of applying subparagraph (i)(1), the term "market" will be defined as it is defined under the rule that is being applied.

NOTE 3: In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of this subpart.

NOTE 4: Paragraph (a) of this section will not be applied so as to require the divestiture of ownership interests proscribed herein solely because of the transfer of such interests to heirs or legatees by will or intestacy, provided that the degree or extent of the proscribed cross-ownership is not increased by such transfer.

NOTE 5: Certifications pursuant to this section and these notes shall be sent to the attention of the Cable Services Bureau, Federal Communications Commission, 445 12th Street, NW, Washington, DC 20554.

NOTE 6: In applying paragraph (a) of § 76.501, no minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporation in which the minority interest is held, provided however, that an investor that has an interest under the terms of Note 2(i) of this section shall have that interest attributed.

[58 FR 27677, May 11, 1993, as amended at 60 FR 37834, July 24, 1995; 61 FR 15388, Apr. 8, 1996; 64 FR 50646, Sept. 17, 1999; 64 FR 67194, Dec. 1, 1999]

#### **§ 76.502 Time limits applicable to franchise authority consideration of transfer applications.**

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

[61 FR 15388, Apr. 8, 1996]

#### **§ 76.503 National subscriber limits.**

(a) Subject to paragraph (b) of this section, no cable operator shall serve more than 30% of all multichannel-video programming subscribers nationwide through multichannel video programming distributors owned by such operator or in which such cable operator holds an attributable interest.

(b) Cable subscribers that a cable operator does not serve through incumbent cable franchises shall be excluded from the cable operator's limit.

(c) For purposes of this section, "incumbent cable franchise" means a cable franchise in existence as of October 20, 1999 and all successors in interest to these franchises.

(d) Subscribers that a cable operator serves through incumbent cable franchises shall include all subscribers served by those incumbent cable franchises, regardless of when the subscribers were added to the incumbent cable franchise system.

(e) “Multichannel video-programming subscribers” means subscribers who receive multichannel video-programming from cable systems, direct broadcast satellite services, direct-to-home satellite services, multichannel multipoint distribution services, local multipoint distribution services, satellite master antenna television services (as defined in § 76.5(a)(2)), and open video systems.

(f) “Cable operator” means any person or entity that owns or has an attributable interest in an incumbent cable franchise.

(g) Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

NOTE 1 TO § 76.503: Certifications made under this section shall be sent to the attention of the Cable Services Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

NOTE 2 TO § 76.503: *Attributable Interest* shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (“LLC”) or Registered Limited Liability Partnership (“RLLP”) shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no ma-

terial involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99-288, CS Docket No. 98-82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not

## Federal Communications Commission

## § 76.504

be attributed with ownership of that entity by virtue of such status.

[64 FR 67195, 67199, Dec. 1, 1999]

### **§ 76.504 Limits on carriage of vertically integrated programming.**

(a) Except as otherwise provided in this section no cable operator shall devote more than 40 percent of its activated channels to the carriage of national video programming services owned by the cable operator or in which the cable operator has an attributable interest.

(b) The channel occupancy limits set forth in paragraph (a) of this section shall apply only to channel capacity up to 75 channels.

(c) A cable operator may devote two additional channels or up to 45 percent of its channel capacity, whichever is greater, to the carriage of video programming services owned by the cable operator or in which the cable operator has an attributable interest provided such video programming services are minority-controlled.

(d) Cable operators carrying video programming services owned by the cable operator or in which the cable operator holds an attributable interest in excess of limits set forth in paragraph (a) of this section as of December 4, 1992, shall not be precluded by the restrictions in this section.

(e) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(f) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

NOTE 1: Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or

operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99-288, CS Docket No. 98-82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers